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August 6, 1993

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25 Market St., CN 118
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Re: Perth Amboy v. Madison Industries, et al.
Docket Nos. C-4474-76 and L-28115-76 (Consolidated)
CPS and Madison Remedial Investigation Reports

Dear Mr. Licata:

The purpose of this letter is to set forth the comments of the City of Perth Amboy ("City") regarding the Remedial Investigation ("RI") of the CPS/Madison Superfund Site and the City's Runyon Watershed, performed by Madison Industries, Inc. ("Madison") and CPS Chemical Company, Inc. ("CPS"). The City's engineering consultant, Fletcher N. Platt, Jr., P.E. of Killam Associates, is providing additional technical comments under separate cover.

There are three types of issues that the City comments on regarding the RI report prepared by Converse Consultants East on behalf of Madison, dated June 25, 1993, and RI report prepared by Dan Raviv Associates, Inc. on behalf of CPS, dated June 18, 1993. The first issue is the failure of Madison and CPS to comply with the applicable statutory and regulatory requirements for conducting a proper RI. The next issue is failure of Madison and CPS to appropriately address each Area of Environmental Concern ("AOC") that exists on the CPS/Madison Superfund Site and the Runyon Watershed. The third issue is the continuing discharges at the Superfund Site evidenced by the data contained in both reports.

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I. FAILURE TO COMPLY WITH STATUTORY AND REGULATORY REQUIREMENTS

A. Failure to Comply with the NCP

In preparing the RI, CPS and Madison must comply with the requirements of the National Contingency Plan ("NCP"), found at 40 C.F.R. 300.430, and follow Guidance issued by the United States Environmental Protection Agency ("USEPA") on performing a RI/FS (Interim Final Guidance for Conducting RI/FS, OSWER Directive No. 9355.3-01 and Model Statement of Work, OSWER Directive No. 9835.8). The failure to comply with the NCP and following the USEPA's guidance highlights the deficiencies regarding the investigation of present ground water, surface water and soil contamination and the investigation and abatement of continuing sources of contamination.

B. Failure to Assemble and Evaluate All Existing Data

Section 300.430 (b) (1) of the Federal Regulations requires that CPS and Madison assemble and evaluate the existing data on the Superfund Site and the Runyon Watershed, including the results of any removal actions, remedial preliminary assessments and other site inspections. Therefore, all data that exists as a result of ongoing enforcement or regulatory action at the CPS and Madison facility and any other information obtained from various inspections of the CPS and Madison facility should be considered and set forth in RI.

The two RI reports do not provide a full disclosure of all relevant data generated by inspections conducted by the USEPA, the New Jersey Department of Environmental Protection and Energy ("NJDEPE")¹, and internal inspections conducted by CPS and Madison personnel pursuant to the federal Resource Conservation and Recovery Act and the state Solid Waste Management Act ("SWMA").

Furthermore, the RI must demonstrate that the ongoing processes of involving hazardous substances do not pose a continuing threat to the environment, in particular the drinking water supply of the City. The failure of CPS and Madison to include the data and findings of past inspections and investigations at the Superfund Site allows the RI to be an incomplete

¹A number of the inspection reports prepared by the NJDEPE were a joint exhibit of the NJDEPE and the City in the contempt trial before Judge Hamlin in June 1992.

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investigation of the environmental impacts of the Site. An incomplete investigation does not supply adequate information to the USEPA and the NJDEPE when it determines the appropriate remedial actions to implement at the Site.

C. Failure to Comply with Community Relations Requirements

Section 300.430 (c) requires CPS to comply with community relations requirements prior to commencing field work for the RI. This requirement is not being met. The community relations efforts must include the following:

1. Conducting interviews with local officials, community residents, public interest groups, or other interested parties or affected parties, as appropriate to solicit their concerns and information needs and to learn how and when citizens would like to be involved in the Superfund process.
2. Preparation of a formal Community Relations Plan ("CRP"), based upon the community interviews and other relevant information, specifying the community relations activities that will be undertaken during the remedial response.
3. Establishment of at least one local information repository at or near the location of the response action which would contain a copy of items made available to the public including information that describes the technical assistance grants application process.

Supplemental EPA Guidance regarding a RI conducted by potentially responsible parties was issued by USEPA on July 2, 1991. The Guidance emphasizes the necessity for early public involvement by stating:

Although the Agency is preparing the baseline risk assessment, it is important that all interested parties, including the public and the PRPs, be given an opportunity to have early input into the direction of the risk assessment. This can best be achieved by the RPM's actively soliciting input from all interested parties during the RIFS scoping process. At many sites, public scoping meetings may be the appropriate means to accomplish this.

While CPS and Madison have on occasion met with the public officials from the City, there has been no public citizen input and no preparation of a CRP, as contemplated by 40 C.F.R. 300.430 (c). The failure to include this requirement in the RI provides an incomplete picture regarding the effect that any future remedial action will have on the surrounding community.

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D. Baseline Risk Assessment to be Performed by NJDEPE

The NCP requires the NJDEPE, and not the responsible party, to use the data developed by the remedial investigation to conduct a site-specific baseline risk assessment to characterize the current and potential threats to human health and the environment that may be posed by contaminants migrating to the groundwater or surface water, releasing to air, leaching through soil, remaining in the soil, and bio-accumulating in the food chain. 40 C.F.R. 300.430. The results of the baseline risk assessment assists in establishing excessive exposure levels for use in developing remedial alternatives in a Feasibility Study.

In CPS's RI Report (page 21, paragraph 8.0), the responsible party proposes a baseline risk assessment that is inappropriate, incomplete and unacceptable. CPS's RI (page 25, paragraph 8.3.1) also proposes that the proposed soil cleanup standards be categorized as "to be considered" under CERCLA acknowledging that these standards are not ARARs. In Madison's RI Report (Page 8, last paragraph), Madison proposes that the proposed soil cleanup standards be considered are the applicable, relevant or appropriate requirements ("ARARs").

In accordance with the NCP, the ARARs must be promulgated to be legally relevant and therefore the proposed, but not yet adopted, standards should not be applied. In addition, Madison proposes that the non-residential standards should apply. Non-residential standards are unacceptable in light of the nature of the site and the proximity to the surface recharge area and residential standards must be imposed to protect the water supply.

Also, in CPS's RI Report (page 37, paragraph 5.0), CPS limits the RI to the identification of treatment technology potentially applicable to soil conditions encountered at the site. This limitation does not comply with 40 C.F.R. 300.430, which requires that alternatives be developed for controlling the risks posed through each pathway by a site. CPS proposal to identify only alternatives to control the risk posed by the soil conditions is unacceptable to the City.

II. ALL SOURCES OF CONTAMINATION MUST BE INVESTIGATED FOR CONDUCTING A COMPREHENSIVE BASELINE RISK ASSESSMENT

Madison and CPS fail to appropriately address each AOC on the CPS/Madison Superfund Site and the Runyon Watershed. In order for the NJDEPE to conduct a baseline risk assessment for all of the listed contaminate migration routes, the RI must investigate all sources of contamination.

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As discussed in the comments submitted by Mr. Platt on behalf of the City, there are significant deficiencies in the AOCs investigated and AOCs that were not investigated. The remaining steps in the process will be defective without a full investigation of all sources of contamination.

A. Failure to Investigate Ground Water and Surface Water

As previously stated by the City in its comments to the NJDEPE regarding the scope of the RI, the RI submitted by the CPS and Madison are limited to soil investigation of heavy metals on the Madison site and volatile organic compounds ("VOCs") on the CPS site in violation of statutory and regulatory requirements.

In the Madison RI (Page 10, Paragraph 4), Madison states that a ground water and potable well investigation is not applicable because this investigation relates to the soil only. In prior correspondence, the City has expressed its concern that the RI has been limited to a soil investigation. However, the City has been advised by the NJDEPE that a phased approach to the investigation of the site is being undertaken. The City's position remains that a complete ground water investigation must still be conducted to fully delineate the plume.

Accordingly, the RI is deficient because it does not investigate the full environmental consequences of the Superfund site on soils, ground water and surface water.

B. Failure to Investigate Soluble Organic Compounds

The limitation of the investigation of VOCs on the CPS site and heavy metals on the Madison site fails to take a comprehensive approach to the heavy metals, VOCs and soluble organic compounds ("SOCs") that are impacting the City's drinking water supply. The failure to conduct a comprehensive RI will result in a flawed baseline risk assessment, feasibility study and selection of a remedial action.

Our concern regarding the SOCs is related to our previously expressed concerns regarding the RI. As required by 40 C.F.R. 300.430 and related Guidance, the lead agency must prepare a baseline risk assessment to appropriately characterize the health and ecological risks of the site and properly select a remedy for the site.

The EPA guidance document entitled, Federal Guidance on Performing Risk Assessments in Remedial Investigation/Feasibility Study Conducted by Potentially Responsible Parties, states:

EPA should develop and release two or more risk assessment memoranda to all interested parties. One should list the chemicals of concern for human health and

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ecological effects and their toxicity values; the other should list the potential exposure scenarios, exposure point concentrations that EPA plans to use in the baseline risk assessment. The purpose of releasing this information is three-fold: 1) to keep the public informed about progress at the site, 2) to allow public input at this stage, and 3) to give the PRP sufficient information to continue developing remedial alternatives that are appropriate for the site.

After considering all submitted comments, EPA will prepare the baseline risk assessment report. EPA should release this report to the public at the same time it releases the final RI report prepared by the PRP. (Emphasis supplied).

The failure to fully investigate and include SOCs in the RI will cause the insufficient development of a baseline risk assessment, feasibility study and the selection of the remedial action.

C. Failure to Investigate All Areas of Environmental Concern

1. Madison RI

As more completely set forth in correspondence from Mr. Platt on behalf of the City, Madison fails to fully investigate the AOCs on its site. The source of surface water contamination that may be impacting the City's drinking water supply is not addressed in the RI.

There is significant contamination of cadmium, lead, zinc and copper in the surface waters and sediments. The presence of these heavy metals indicates that there is an ongoing source of contamination. The source of these contaminants should be investigated, as well as the parties responsible for the discharges.

In second paragraph of page five of the RI, Madison refers to the installation of Recovery Well #6 between MI-2 and Pricketts Brook.

The RI and the Performance Monitoring Program Report fail to give a full explanation of the engineering rationale behind the installation of the Recovery Well. The City believes that Recovery Well #6 was needed to prevent the continuing discharge from Madison's hazardous waste piles into Pricketts Brook at times of heavy rainfall. The RI should provide a complete explanation of this remedial measure which was installed without a full discussion of the technical basis for the new recovery well, as well as the source of the contaminants it is designed to address.

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It appears some, if not all of these contaminants are being released by not only Madison, but other tenants at the site, including Old Bridge Chemical Company, Inc. ("OBC"). The presence of copper most likely can be attributed to OBC. It is possible that the RI needs to be expanded to include OBC's operations due to the operations at the site by both Madison and OBC are so intertwined that the NJDEPE cannot distinguish between the two companies during its monthly RCRA inspections.

OBC and Madison stockpile hazardous material on the site in close proximity to the surface waters and the City's property. The stockpiled hazardous material has been the subject of three lawsuits and numerous reports prepared by the NJDEPE noting that the presence of the hazardous material is a violation of the SWMA. The fact that these stockpiled materials have existed and continue to exist on an pervious surface, uncovered and in the open environment and has not been fully addressed by the RI. See the pictures included in Mr. Platt's correspondence.

The presence of the sludge from the waste water treatment process that remains stockpiled on the Madison site raises the same issues as the hazardous waste piles. The stockpiled sludge is also noted as a violation of the SWMA in the monthly RCRA reports prepared by the NJDEPE. The sludge is not properly sampled, exists on an pervious surface, is uncovered and in the open environment and has not been fully addressed by the RI.

The presence of underground tanks in violation of RCRA and the SWMA are not addressed by the RI. It appears from the RI that these tanks may be a continuing source of contamination. The monthly RCRA reports prepared by NJDEPE note violations of the SWMA by the continued operation of the tanks. The tanks should be fully investigated as an AOC.

The NJDEPE monthly RCRA reports also note the improper storage of drums and other containers of hazardous waste in violation of the SWMA. RCRA states that it is considered a release when drums are stored in an unprotected area exposed to the environment. All drum and container storage areas should be investigated as AOCs due to probable releases from the drums and containers in the open environment.

2. CPS RI

The deficiencies in the CPS RI are set forth in correspondence by Mr. Platt on behalf of the City. There is a need for additional phases of investigation in all AOCs, including the apparent continuing discharge of VOCs onto the site and into the ground water.

The AOCs should reflect the past and present problems at the site as reflected in the NJDEPE monthly reports and the internal reports prepared by CPS. The tank farms and process areas

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should be more fully investigated due to the lack of an impervious surface to control surface spills. Moreover, the source and remediation of the high values of VOCs at the site found in the soil gas survey and monitoring well WEC-2 should be given high priority in the next phase of the RI.

CPS lists the criteria to be used to evaluate the remedial action alternatives. These criteria are not consistent with the nine criteria for evaluation set forth in 40 C.F.R. 300.430 (9). For example, the RI does not include the environmental evaluation that must be performed to assess threats to the environment, especially sensitive habitats and critical habitats of species protected under the Endangered Species Act. 40 C.F.R. 300.430 (G).

The description of the property includes reference to a concrete overlay constructed over a small portion of the site in 1979. The integrity of this pavement is not specifically reflected in the RI, yet the RI cites the concrete as preventing volatilization and infiltration. Furthermore, CPS acknowledges that it is unknown if releases occurred prior to the upgrade.

III. CONTINUING DISCHARGES AT THE SUPERFUND SITE

The data in both CPS's and Madison's RI demonstrate that there are continuing discharges at the site. The selection of the remedial action, such as recharge, placement of recovery wells and the type of treatment for the recovered water, require that there be no continuing discharges at the site. The pace of this case, the priority of the site at the NJDEPE and direct impact on City's drinking water should dictate that the investigation and abatement of continuing discharges be the highest priority of the next phase of the RI. The failure to correct the problems at both sites will further delay the implementation of the selected remedial action.

Very truly yours,

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